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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/783,850 | 02/20/2004 | William D. Johnson | P-6238-04-04 | 7659 |
| 23983 | 7590 | 05/03/2006 | EXAMINER | |
| MILLS LAW FIRM, PLLC P.O BOX 1245 Cary, NC 27512-1245 | | | BARNEY, SETH E | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3752 | |
| DATE MAILED: 05/03/2006 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|-------------------------------|-------------------------------------|--|
| Office Action Summary | Application No. 10/783,850 | Applicant(s) JOHNSON, WILLIAM D. | |
| | Examiner Seth Barney | Art Unit 3752 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 12-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,2 and 12 is/are allowed.
- 6) ☒ Claim(s) 3-10,13 and 14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 3, 4, 13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,533,676 to Conley in view of U.S. Patent Application Publication No. 2004/0084552 to Huartson.

The Examiner notes that newly presented claimed 14 is identical to previously non-amended claim 2 and is identically rejected as in the previous office action.

Regarding claim 14, Conley discloses a vehicle spraying device having:

- a drive unit including an engine (12) operatively connected to a pair of laterally spaced manually steerable drive wheels (20).

- a fluid reservoir (14) for liquid media.

- pump (44) means for delivering the liquid media to liquid delivery line (52). See Figure 1.

- control means (48) for the liquid delivery lines carried by the drive unit, the control means being manually operative to selectively deliver the liquid media to the nozzle means

Conley does not disclose nozzle means including a first set of laterally spaced nozzles carried on the frame means with the outermost being within the forward lateral

vision of the operator. Conley does expressly states that the vehicle spraying device can be converted to walk-behind apparatus. See column 4 lines 1-9. Huartson discloses a walk behind sprayer having a frame (36) mounted on the front of the walk behind sprayer in the forward lateral vision of the operator. It would have been obvious to one having ordinary skill in the art at the time the invention was made to re-position the spray nozzles of Conley as taught by Huartson when converting the spray device of Conley into a walk behind sprayer in order to avoid having the nozzles spray directly on the operator.

Regarding claim 3, Conley discloses a pair of lateral spray arms extending laterally outwards from the sides of the frame and include nozzles (54) thereon. See Figure 3.

Regarding claim 4, the control means are operative to selectively fluidly connect the sets of nozzles to the pump means. See column 3 lines 50 to 52.

Regarding claim 13, the tank means is cylindrical. See Figure 1.

3. Claims 5-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,533,676 to Conley and U.S. Patent Application Publication No. 2004/0084552 to Huartson as applied to claim 2 above, and further in view of U.S. Patent No. 6,422,483 to Yocom et al.

Regarding claim 5, Conley discloses all of the limitations of the claims except for the spray arms being pivotally connected to the frame means for movement about a horizontal longitudinal axis between a horizontal position and a vertical position. Yocom shows this orientation in Figure 8. It would have been obvious to one having ordinary

skill in the art at the time the invention was made to modify the pivotal booms of Conley with the pivotal orientation of Yocom in order to make the device more compact.

Regarding claim 6, Conley discloses all of the limitation set forth in the claim except for hinge means. Conley discloses pivotable booms, but does not expressly disclose that they have hinges with biased springs. Yocom discloses a liquid spraying tractor having a boom with hinges that are spring biased (88). See column 4, lines 51 to 54 and Figures 2A-2B, 7 and 8. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the vehicle spraying device of Conley with the hinge means and spring of Yocom in order to easily pivot the boom for storage and passage into smaller areas, while simultaneously allowing the boom to easily return to the other position by the spring bias.

Regarding claim 7, Conley does not disclose support means carried on the side of the frame for releasably maintaining the spray arms. Yocom discloses support means (110,112) attached to the frame for supporting the boom arms in position during operation. See column 4, lines 62 to 65. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the vehicle spraying device of Conley with the supports of Yocom in order to retain the boom arms in position during operation.

Regarding claim 8, the control means can be set in a first conditions such all flow is blocked to all nozzles (off or to the hand sprayer), a second condition where a first set of nozzles receives flow, and a third condition in which a second set of nozzles receive flow. See column 3 lines 50 to 60.

Regarding claim 9, if all of the valves (48) and spray gun (46) were closed, the liquid flow would travel in a recirculation path between the pump (44) and the reservoir as shown in Figure 3.

4. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,533,676 to Conley, U.S. Patent Application Publication No. 2004/0084552 to Huartson, and U.S. Patent No. 6,422,483 to Yocom et al. as applied to claims 2-9 above, and further in view of U.S. Patent No. 6,502,771 to Wyne.

While Conley does disclose that the spraying device may be a walk-behind device, he does not expressly disclose that it is a zero turn radius walk-behind device. Wyne discloses a typical spraying device that can be walk-behind and has a zero-turn radius. See column 4 lines 48 to 67. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the walk-behind spraying device of Conley with the zero turn radius structure of Wyne in order to provide a highly desirable control feature. See column 2 lines 64 to 67.

Response to Amendment

5. The declaration filed on February 21, 2006 under 37 CFR 1.131 has been considered but is ineffective to overcome the Huartson reference.

6. The declaration is ineffective to overcome the Huartson reference for the following reasons:

-The declaration is written and signed by the attorney of record, Peter D. Sachtjen. Rule 1.131 states that "When any claim of an application or a patent under reexamination is rejected the inventor of the subject matter of the rejected claim, the

owner of the patent under reexamination, or the party qualified under §§ 1.42, 1.43, or 1.47, may submit an appropriate oath or declaration to establish invention of the subject matter of the rejected claim prior to the effective date of the reference or activity on which the rejection is based.” Because applicant’s attorney does not fall into any of these categories the declaration is not permissible under rule 1.131.

-The scope of the declaration is not commensurate with the scope of the claims. Claim 14 and the claims depending contain subject matter that is not adequately presented in Exhibits A or B. For example claim 14 recites, turf areas, manually steerable drive wheels, forwardly extending pivoting wheels, pump means for delivering the liquid media from said fluid reservoir to liquid delivery lines, nozzle means fluidly connected, etc. These limitations are not found in Exhibit A nor reasonably presented in the photographs of Exhibit B. There is no statement that the declaration is commensurate with the scope of the claims and the specification as filed. Furthermore, Exhibit A makes no reference to the photographs of Exhibit B being the claimed invention.

-The declaration fails to establish acts performed in this country as required by rule 1.131.

-The declaration incorrectly refers to Exhibit B as drawings when they are actually photographs.

Allowable Subject Matter

7. Claims 1, 2 and 12 are allowed.

Response to Arguments

8. Applicant's arguments filed February 21, 2006 have been fully considered but they are not persuasive. Because the declaration is ineffective and no other arguments have been presented on the rejected claims the rejection of the previous office action has been maintained.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Seth Barney whose telephone number is (571)272-4896. The examiner can normally be reached on 7:30am-5:00pm (Mon-Fri), first friday off.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel can be reached on (571)272-4919. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Seth Barney
Examiner
Art Unit 3752

sb


STEVEN J. GANEY
PRIMARY EXAMINER
5/1/06